THE MADRAS VILLAGE COURTS ACT, 1888.

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(Chapter I—Prileminary.)

MADRAS ACT No. I OF 1889.[1]

[THE MADRAS VILLAGE COURTS ACT, 1888.]

[1*st December* 1888 ; 30*th January* 1889.]

An Act to consolidate and amend the law relating to the courts of village munsifs in the Presidency of Fort St. George.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to the courts of village munsifs in the Presidency of Fort St. George ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and commencement. Local extent. **1.** (1) This Act may be called "The Madras Village Courts Act, 1888," and shall come into force at once. [2][. . .]

(2) It extends to the territories subject [3][. . .] to the Governor in Council of the Presidency of Fort St. George, except the Scheduled Districts as defined in Act No. XIV of 1874, and the town of Madras. Provided that the [4][State Government] may by notification in the [5][Official Gazette] from time to time withdraw any village or area from its operation and cancel such notification.

2. [*Enactments repealed.*] *Repealed by section* 3 (2) *of the Repealing and Amending Act,* 1901 (*Central Act XI of* 1901).

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[1] For Statement of Objects and Reasons, *see Fort St. George Gazette* Supplement, dated 20th December 1887, page 13 ; for Report of the Select Committee, *see ibid,* dated 15th May 1888, page 1 ; for Proceedings in Council, *see ibid,* dated 24th January 1888, page 1, and *ibid,* dated 13th November 1888, page 14.

[2] Certain words were omitted by the Madras Village Courts (Amendment) Act, 1919 (Madras Act II of 1920), section 3.

The Act was declared not to apply to the East Godavari Agency by notification under sub-section (2) of section 52-A of the Government of India Act—*see* Notification No. 136, Revenue, published at pages 553–554 of Part I of the *Fort St. George Gazette,* dated the 15th April 1930.

The Act has been extended with certain modifications to the Scheduled Areas in the East Godavari, West Godavari and (Vizagapatam) districts by the Madras (Partially Excluded Areas) Village Courts Regulation, 1940 (Madras Regulation I of 1940).

[3] The words "for the time being" were omitted by the Adaptatior Order of 1937.

[4] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[5] These words were substituted for the words "*Fort St. George Gazette*" by the Adaptation Order of 1937.

Application of Act to suits or decrees pending.

3. All suits pending in the courts of village munsifs at the time of this Act coming into force shall be deemed to have been instituted under this Act, and all decrees passed by village munsifs before such date may be executed under the provisions hereinafter contained relating to execution of decrees passed under this Act.

Procedure for suits and decrees pending in area withdrawn from Act.

4. When any village or area is withdrawn from the operation of this Act, all suits pending in a village court therein shall be heard and determined, and all decrees passed by such court and remaining unexecuted shall be executed by the civil court which, if the suit were about to be instituted, would have jurisdiction to try it.

Such suits shall be tried and such decrees shall be executed as suits instituted in, and decrees passed by, such civil court.

Interpretation clause.

5. In this Act, unless there be something repugnant in the subject or context—

"Village."

"Village" means in a permanently settled estate a local area for which at the passing of this Act there is a village munsif's court constituted under Madras Regulation IV of 1816 [1] or for which a village court has been established under this Act; and elsewhere a local area recognized by [2][the State Government] from time to time as a village for purposes of collecting the land revenue.

"Village court."

[3]["Village court" means the court of a village munsif appointed under section 7 or a panchayat court established under section 9.

"Village munsif."

"Village munsif" means the judge of the court of a village munsif established under this Act [4][and except in sub-section (1) of section 16 includes—

(*a*) the president of a panchayat court; and

(*b*) the vice-president of a panchayat court, exercising the functions of its president under this Act or the rules made thereunder].

"District Munsif."

"District Munsif" means the District Munsif within the local limits of whose jurisdiction the village court is situated:

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[1] Repealed by the Repealing and Amending Act, 1901 (Central Act XI of 1901) s. 3.

[2] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[3] These definitions were substituted for the original definitions of "Village Court", "Village Munsif", "District Judge" and "District Munsif" by section 4 of the Madras Village Courts (Amendment) Act, 1919 (Madras Act II of 1920).

[4] This was substituted for the words and figures "and except in sections 7 and 16 includes the President of a Panchayat Court" by section 2 (i) of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

(Chapter I.—Preliminary. Chapter II.—Establishment and Constitution of Village Courts)

Provided that if the village is not situated within the local limits of the jurisdiction of any District Munsif, the Subordinate Judge, or if there be no Subordinate Judge, the District Judge within the local limits of whose jurisdiction the village is situated, shall be deemed to be the District Munsif:

Provided further that if in any area the District Munsif does not exercise small cause jurisdiction and a separate Court of Small Causes has been established, the Judge of such Court shall be deemed to be the District Munsif.]

"Movable property."

[1]["Movable property" includes growing crops as well as ungathered products of land.]

"Prescribed."

[2]["Prescribed" means prescribed by rule made by the [3](State Government) under this Act.]

"Sign."

[2]["Sign" with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions.]

CHAPTER II.

Establishment and Constitution of Village Courts.

Establishment of village courts.

6. The [2][State Government] may from time to time by order to be notified in the District Gazette—

(1) group two or more villages and establish one village court for them in lieu of the several village courts previously existing therein;

(2) constitute divisions in any village, and establish a separate village court for each of such divisions in lieu of the village court previously existing in such village;

(3) establish a new village court for any specified area.

[4][* * * *].

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[1] This definition was inserted by section 2 (ii) of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

[2] This definition was inserted by section 4 of the Madras Village Courts (Amendment) Act, 1919 (Madras Act II of 1920).

The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[4] The last sentence of section 6 was omitted by section 6 of the Madras Village Courts (Amendment) Act, 1919 (Madras Act II of 1920).

(Chapter II.—Establishment and Constitution of Village Courts)

Appointment of village munsif.

7. [1] [In villages where there are no panchayat courts] village munsifs shall be appointed by the Collector [2] [in the manner prescribed] provided that no person not residing within the village shall be eligible for that office.

Suspension or removal of village munsif.

8. The Collector of the district may suspend or remove a village munsif [3] [or a member of a panchayat court] for incapacity, neglect of duty, misconduct or other just and sufficient cause, and shall do so, on a requisition passed by the District Judge for like cause appearing in the judicial proceedings of a [4] [village court].

From every order [5] [of suspension or removal] an appeal may be made within three months to the Board of Revenue, if the order was passed by the Collector without orders from the District Judge, or to the High Court if passed upon such orders. The decision of the Board of Revenue or High Court as the case may be, on all such appeals shall be final.

Constitution of panchayat courts.

[6] [**9.** (1) The [7] [State Government] may, by order notified in the District Gazette, constitute a panchayat court, as hereinafter provided, for any village, group of villages or part of a village; and thereupon no court of a village munsif appointed under section 7 shall exercise jurisdiction under this Act in any part of such area.

(2) For every court so established the Collector shall determine the number of members, provided that such number shall not be less than five nor more than twelve.

(3) Subject to such rules as may be made by the [7] [State Government] the members of the panchayat court shall be appointed by election.

[8] [(3-A) Notwithstanding anything contained in sub-sections (2) and (3), the Collector may in his discretion appoint not more than two members to the panchayat court by nomination from any one or more of the communities which are

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[1] These words were inserted by section 7 of the Madras Village Courts (Amendment) Act, 1919 (Madras Act II of 1920).

[2] These words were substituted for the words "of the district subject to such rules as the Governor in Council may from time to time prescribe" by *ibid.*

[3] These words were inserted by section 8 (1), *ibid.*

[4] These words were substituted for the words "village munsif" by *ibid.*

[5] These words were substituted for the words "suspending or removing a village munsif" by section 8 (2), *ibid.*

[6] This section was substituted for the original section 9 by section 9, *ibid.*

[7] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[8] This sub-section was inserted by section 2 of the Madras Village Courts (Amendment) Act, 1935 (Madras Act XV of 1935).

in a minority in the area for which the court is established (for example, Muslims, Indian Christians and Depressed or backward classes) and which communities are not already represented on the court. Any member or members so appointed shall be in addition to the strength of the court as determined under sub-section (2).]

Term of members.

(4) Subject to such rules as may be made by the [1] [State Government] a member of a panchayat court shall hold office for a term of three years.

Election of president.

[2] [(5) (*a*) A panchayat court shall elect, according to the rules prescribed in that behalf, one of its members to be its president and another member to be its vice-president.

(*b*) The president may, by order in writing, delegate any of his functions to the vice-president :

Provided that he shall not delegate any functions which the panchayat court expressly forbids him to delegate.

(*c*) If the president is absent from the jurisdiction of the court or is incapacitated, his functions shall devolve on the vice-president.

(*d*) When the office of president is vacant, the vice-president shall exercise the functions of the president until a new president assumes office.

(*e*) Every sitting of the court shall be presided over by the president, and in his absence, by the vice-president if there is one. If there is no vice-president, or in the absence of both the president and the vice-president, the members present and constituting the court shall elect from among themselves a president for the purposes of that sitting.]

Quorum.

(6) Three members of a panchayat court shall constitute a quorum, and the decision of the majority present shall be the decision of the court :

Provided that in the case of equality of votes the president shall have [3] [and exercise] a casting vote.

State Government's power to disestablish panchayat courts.

(7) The [1] [State Government] may, by order notified in the District Gazette, disestablish any panchayat court.

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[1] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[2] This sub-section was substituted for the original sub-section (5) by section 3 of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

[3] These words were inserted by section 3 (1) of and the Second Schedule to the Madras Repealing and Amending Act, 1951 (Madras Act XIV of 1951).

(Chapter II.—Establishment and Constitution of Village Courts. Chapter III.—Jurisdiction, Res Judicata and Limitation.

Transfer of suits and civil proceedings.

[1][9-A. Where a village court is established under any of the provisions of section 6 or sub-section (1) of section 9 in any local area, in lieu of a village court or courts having jurisdiction over such area—

(*a*) all suits or civil proceedings pending in such court or courts shall be deemed to have been instituted or taken in the court newly established for such area ; and

(*b*) all decrees passed by such court or courts which have not been executed or are under execution shall be deemed to have been passed by the court so established.

Transfer of criminal cases and proceedings.

9-B. The provisions of section 9-A shall, so far as may be, apply to criminal cases or proceedings pending before a panchayat court or courts in lieu of which a panchayat court is newly established.]

Village karnam to assist munsif in keeping register of suits and record of proceedings.

10. The village munsif shall keep a register of suits preferred to the village court and shall write the proceedings of the court and it shall be the duty of the village karnam, if so required, to assist in keeping such register and in writing the proceedings of the court.

Village servant to serve summonses, etc.

11. It shall be the duty of the village servant usually employed in carrying messages to serve all summonses, notices and orders issued under this Act and to act under the orders of the village munsif in seizing, selling and delivering movable properties attached under this Act.

Collector may appoint any person in lieu of, or in addition to, village karnam and village servant.

12. It shall be competent to the Collector of the district, subject to the control of the [2] [State Government] to appoint any person in lieu of, or in addition to, the village karnam, or the village servant mentioned in section 11 to perform the duties prescribed by sections 10 and 11 respectively.

CHAPTER III.

JURISDICTION, RES JUDICATA AND LIMITATION.

Cognizance of suits by village courts.

[3] 13. The following are the suits which shall be cognizable by village courts (namely)—claims for money due on contract, or for [4][movable property] or for the value of such property,

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[1] Sections 9-A and 9-B were inserted by section 4 of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

[2] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950)

[3] *See* also section 3 of the Madras Civil and Village Courts (Amendments) Acts, 1951 (Madras Act XVI of 1951).

[4] These words were substituted for the words "personal property" by section 5 of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

(Chapter III.—Jurisdiction, Res Judicata and Limitation.)

[1] [or for any tax, fee, or other sum due to a local authority], when the debt or demand does not exceed in amount or value the sum of [2] [rupees fifty] whether on balance of account or otherwise :

Provided that no action shall be brought in any such court— Proviso.

(1) on a balance of partnership account unless the balance shall have been struck by the parties or their agents ;

(2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will ;

(3) for rent for land unless such rent be due upon a written contract signed by the defendant ;

(4) by or against [3] [the Government] or public officers in their official capacity ;

(5) by and against minors or persons of unsound mind.

14. With the written consent of both parties executed before the court, a village court may hear and determine suits of the nature described in section 13, the amount or value of which shall not exceed Rs. 200. Jurisdiction up to Rs. 200 with consent.

15. Subject to the provisions contained in section 16, every suit brought under this Act shall be instituted in the [4] [village court] within the local limits of whose jurisdiction all the defendants at the time of the commencement of the suit reside, or carry on business, or personally work for gain. Court in which suit to be instituted.

[5] [**16.** (1)] No village munsif shall try any suit to which he is a party, or in which he is personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit. Every such suit or proceeding may be instituted in the [6] [village court] of any village immediately adjoining. Suit in which village munsif is personally interested.

[5] [(2) When any member of a panchayat court is a party to, or personally interested in, any suit or proceeding before Suit in which a member is personally interested.

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[1] These words were inserted by section 2 of the Madras Village Courts (Amendment) Act, 1940 (Madras Act XVIII of 1940). This was permanently re-enacted by section 2 of, and the First Schedule to, the Madras Re-enacting (No. II) Act, 1948 (Madras Act VIII of 1948).

[2] These words were substituted for the words "rupees twenty" by section 10 of the Madras Village Courts (Amendment) Act, 1919 (Madras Act II of 1920).

[3] The words "the Crown" were substituted for the word "Government" by the Adaptation Order of 1937 and the word "Government" was substituted for "Crown" by the Adaptation Order of 1950.

[4] These words were substituted for the words "court of the village munsif" by section 11 of the Madras Village Courts (Amendment) Act, 1919 (Madras Act II of 1920).

[5] Section 16 was renumbered as sub-section (1) of section 16 and new sub-section (2) was inserted by section 12, *ibid.*

[6] These words were substituted for the words "court of the munsif" by *ibid.*

such court, he shall withdraw from the court during the hearing of such suit or proceeding and shall take no part in its determination.]

Res judicata.

17. No village court shall try any suit brought on a cause of action, which has been heard and determined by a court of competent jurisdiction, in a former suit, between the same parties, or those under whom they claim.

Suit to include whole claim.

18. Every suit instituted in a villge court shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but he may relinquish any portion of his claim in order to bring the suit within the jurisdiction of such court.

Relinquishment of part of claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall be precluded from bringing a fresh suit for or in respect of the portion so omitted or relinquished.

Incidental determination of matters not cognizable by village courts.

19. If in the decision of a suit cognizable by a village court [1][* *], it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immovable property, or the legal character of either of them, or of those under whom they claim, or the existence of any contract or obligation, which if it had been the immediate subject matter of the suit, would not be cognizable under this Act by a village court, it shall be competent to the village court to decide such question of title, legal character, contract or obligation as far as may be necessary for the determination of such suit, but such decision shall not be evidence of such title, legal character, contract or obligation in any other action though between the same parties or their representatives.

Limitation.

20. The provisions of the Indian Limitation Act, 1877 [2], shall apply to suits and applications under this Act.

[3][* * * * * * * *]

Suit triable by a village court.

[4][**20-A.** (1) If a suit which is triable by a village court is instituted in the court of a District Munsif, he may, unless sufficient reasons exist to the contrary, transfer it to the village court.

Cost of suits tried by District Munsif.

(2) Where a District Munsif tries a suit which is triable by a village court and is of opinion that the suit ought to have been instituted in the village court, no costs shall be allowed to a successful plaintiff and a successful defendant shall be allowed his costs as between pleader and client.]

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[1] The words and figures "under sections 13 and 15" were omitted by Madras Act II of 1920, s. 13.

[2] *See* now the Indian Limitation Act, 1908.

[3] The proviso was omitted by Madras Act II of 1920, s. 14.

[4] This section was inserted by *ibid*, s. 15.

(*Chapter III.—Jurisdiction, Res Judicata and Limitation. Chapter IV.—Of the Institution and Frame of Suits, Recognized Agents, the Issue and Service of Summons on Parties, Adjournments and Consequences of Non-appearance.*)

Transfer of suits.

[1][21. (1) The District Munsif may, on the application of any of the parties, withdraw any suit from a village court and try the suit himself, as if it had been instituted in his court, or transfer it for trial to any other village court within the local limits of his jurisdiction: Provided that any party applying to have a suit withdrawn from a village court and tried by the District Munsif shall, before any such order of transfer is made, pay the amount of the fees payable under the Court Fees Act, 1870, in respect thereof.

Central Act VII of 1870.

Stay of proceedings by District Munsif.

[(2) Pending disposal of any application under sub-section (1) the District Munsif may order a stay of proceedings in the village court.]

CHAPTER IV.

Of the Institution and Frame of Suits, Recognized Agents, the Issue and Service of Summons on Parties, Adjournments and Consequences of Non-appearance.

Suit to be commenced by plaint.

22. Every suit under this Act shall be instituted by presenting a plaint to the village munsif together with as many copies thereof as there are defendants. One copy shall be delivered or affixed as hereinafter provided together with the copy of the summons.

Particulars to be contained in plaint.

23. The plaint shall be written in the language of the village and signed by the plaintiff, or, in his absence, by an agent duly authorized by him, and it shall contain the following particulars :—

(*a*) The name, description and residence of the plaintiff and defendant.

(*b*) A concise statement of the cause of action and when it arose.

(*c*) The relief prayed for, and the total amount or value of the claim.

Appearance in person or by agent.

24. [2][No legal practitioner, whether qualified or unqualified, shall be allowed to appear before a village court on behalf of any party to a suit or proceeding but any party may authorize a servant, gumasta, partner, relation or friend to

[1] Original section 21 was numbered as sub-section (1) of section 21 and new sub-section (2) was inserted by Madras Act II of 1920, s. 16.

[2] These words were substituted for the words " Any party to any suit before a village court may appoint by vakalatnama any person to appear and plead for him, but " by *ibid*, s. 17.

(Chapter IV.—Of the Institution and Frame of Suits, Recognized, Agents, the Issue and Service of Summons on Parties) Adjournments and Consequences of Non-appearance.

appear and plead for him: Provided that] it shall be competent to the village munsif, whenever he thinks it necessary for the ends of justice, to order the personal attendance of any of the parties to the suit; and if the party so ordered does not attend in person, he shall be subject to the same consequences as if he did not appear either in person or by an agent.

Summons to defendant how served.

25. When the plaint has been duly presented, the village munsif shall cause the same to be registered, and shall, by a summons in writing, require the defendant to appear and answer the claim on a specified day. The summons shall be served on the defendant personally [1] [and his signature taken thereon] and a copy thereof delivered to him by the village servant usually employed in carrying messages, or by any other person appointed by the Collector under section 12.

Mode of service when defendant evades service.

26. If the village munsif is satisfied that the defendant is evading service of the summons, [2] [or has refused to affix his signature to the summons], the village munsif may order that it be served upon, and a copy thereof delivered to, an adult male member of the family of the defendant residing with him, or that a copy thereof be affixed upon some conspicuous part of the house in which he generally resides.

Mode of service upon defendant beyond local jurisdiction of court.

27. Whenever it may be necessary to serve the summons upon a defendant beyond the local jurisdiction of the village court, it shall be forwarded to the District Munsif, who shall cause it to be served as if it had been a summons issued by himself, and shall then return it to the village court together with a report of such service. Such report shall be *prima facie* evidence of the facts stated therein.

Procedure if defendant does not appear.

28. If a defendant does not appear in person or by agent on the day fixed, and it be proved that the sum mons was duly served, the village court may proceed *ex parte*.

If it is not proved that the summons was duly served, the village munsif shall issue a fresh summons.

Defendant can claim two days' notice of suit.

Every defendant may claim two clear days' notice of suit, and if the summons was not served in sufficient time to enable him to answer on the day fixed, the hearing shall be adjourned to a future day, of which written notice shall be given to defendant.

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[1] These words were inserted by Madras Act II of 1920, s. 18.
[2] These words were inserted by *ibid*, s, 19.

(Chapter IV.— Of the Institution and Frame of Suits, Recognized Agents, the Issue and Service of Summons on Parties, Adjournments and Consequences of Non-appearance.)

Process to be served at expense of party issuing.

29. Every summons served under this Act otherwise than by the village servant shall be served at the expense of the party on whose behalf it is issued [1] [* * * *].

Procedure where plaintiff does not appear and defendant does not admit claim or where summons is not served through plaintiff's default.

30. If on the day fixed for the defendant to appear—

(1) neither party appears, or

(2) the plaintiff does not appear and the defendant appears and does not admit the claim, or

(3) the summons has not been served owing to the plaintiff's default and the defendant does not appear, the suit shall be dismissed unless the village court otherwise directs.

Procedure where plaintiff does not appear and defendant admits claim.

31. If the plaintiff does not appear, but the defendant appears and admits the claim wholly or in part, the village court shall pass judgment against defendant in accordance with such admission, provided that when only a part of the claim is admitted, the court may adjourn the hearing to a future day.

Setting aside order under section 30 or 31 on cause shown.

32. Whenever a suit is dismissed under clause (1) or clause (3) of section 30, the plaintiff may [2] [subject to the law of limitation] bring a fresh suit; and if within thirty days from the date of an order under clause (2) of section 30 dismissing the suit, or of a decree passed for only a part of the claim under section 31, the plaintiff satisfies the village court that he was prevented by any sufficient cause from appearing the court shall set aside the dismissal or the decree, and shall appoint a day for proceeding with the suit.

Setting aside ex parte decree against defendant.

33. Any defendant against whom a decree has been passed *ex parte* may, within thirty days from the date of executing any process for its enforcement, apply to the village court to set it aside; and if satisfied that the summons or notice was not duly served, or that the defendant was prevented by any sufficient cause from appearing, the court shall set aside the decree and shall appoint a day for proceeding with the suit.

No decree to be set aside without notice to opposite party.

34. No decree shall be set aside on any application under section 32 or section 33 unless notice has been served on the opposite party.

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[1] Certain words were omitted by Madras Act II of 1920, s. 20.

[2] These words were inserted by *ibid*, s. 21.

(Chapter V.—Of the Hearing, Withdrawal or Compromise of Suits and of the Summoning and Examination of Witnesses.)

CHAPTER V.

Of the Hearing. Withdrawal or Compromise of Suits and of the Summoning and Examination of Witnesses.

Procedure on appearance of both parties.

35. When the defendant appears, the court shall ascertain from him whether he admits the claim made in the plaint. If he admits the claim or if the suit be compromised, such admission or compromise shall be recorded in writing and signed by the parties, and the court shall pass a decree in accordance therewith. If he does not admit the claim, he shall be required to state his objections either orally or in writing, and the court may, if it thinks fit, adjourn the case to enable him to file a written statement.

Withdrawal of suit.

36. If the plaintff wishes to withdraw a suit, he shall signify the same in writing to the court, which shall strike the suit off the file and no fresh suit shall be brought on the same cause of action.

When suit may be settled by oath.

37. If either party is willing to let the suit be settled by the oath of the other, and such other party assents and takes the oath, the court shall give judgment according to such oath.

Set-off.

38. The defendant may set-off any amount legally due to him by the plai ntiff for which he could bring a suit in a village court. If such set-off is established, the decree shall be for any sum which finally appears to be due to either party.

Witnesses not present to be summoned.

39. When the defendants' statement has been made, the court shall proceed to examine the truth of the claim, and shall summon the witnesses cited by either party who are not present.

Summons to witnesses how served.

40. Any witness residing within the jurisdiction of the village court may be summoned verbally or in writing. Any witness residing within five miles beyond the court's jurisdiction may be summoned in writing, and such summons shall be served through the village munsif within whose jurisdiction he resides. If any witness resides more than five miles beyond the jurisdiction, the court may call on the parties to frame written interrogatories and shall forward such interrogatories, with a letter, to the villge munsif within whose jurisdiction the witness resides, and such munsif shall forthwith summon and examine the witness upon the interrogatories, and shall return his answers to the court in which the suit is pending.

Interrogatories when to issue.

Sumons to appear and give evidence or pronuce documents.

41. A summons may direct the party summoned either to appear and give evidence or to produce or cause the production of a document.

(*Chapter V.—Of the Hearing, Withdrawal or Compromise of Suits and of the Summoning and Examination of Witnesses. Chapter VI.—Of the Decree and its Execution.*)

Exemption of certain women and other persons from personal appearance.

42. Women who, according to the customs and manners of the country, ought not to be compelled to appear in public, persons exempted from personal appearance in court, and any person who, by reason of sickness or bodily infirmity, cannot attend without serious inconvenience, shall not be summoned; but when the evidence of any such person is necessary, the village court shall examine such person at his or her residence.

Examination of witnesses.

43. Witnesses shall be examined on oath or solemn affirmation, but it shall not be necessary for a village court to take down depositions of witnesses in writing.

Adjournment in view to amicable settlement or for other cause.

44. If it appears likely that the parties will settle the matter amicably, or for any other sufficient cause, the village court may adjourn the hearing to a day to be fixed in the presence of the parties, or in cases in which the defendant does not appear, in the presence of the plaintiff. If, on such day, the parties or any of them fail to appear, the village court may proceed to dispose of the suit in one of the modes prescribed in that behalf by sections 30 and 31, or make such other order as it thinks fit.

CHAPTER VI.

OF THE DECREE AND ITS EXECUTION.

On conclusion of hearing, court to pass decree.

45. When the parties or their agents have been heard, and the evidence on both sides considered, the village court shall pass such decree as may seem just, equitable, and according to good conscience.

Contents of decree.

46. The decree shall contain the number of the suit, the names of the parties, the particulars of the claim, the names of the witnesses examined, the titles of the exhibits read, the decision thereon, and the reasons for such decision. It shall specify the sum of money adjudged, the movable property to be delivered, the sum to be paid in default of delivery, and the amount of costs and by what parties and in what proportions such costs shall be paid.

The decree shall be dated on the day on which it is passed, and signed by the village munsif. When the suit has been heard by a [1] [panchayat court], the decree shall be signed by the members of such [1] [panchayat court] concurring therewith. [2] [A copy of the decree shall then be delivered to each party in the prescribed manner.]

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[1] These words were substituted for the word "bench" by Madras Act II of 1920, s. 5.

[2] These words were substituted for the words "Each party shall be entitled to receive a copy of the decree upon application" by *ibid*, s. 22.

(*Chapter VI.—Of the Decree a nd its Execution.*)

Decree may award interest or order payment by instalments.

47. In suits for money the village court may decree interest on the sum decreed not exceeding twelve per cent per annum from date of suit till date of payment.

When a village court decrees the payment of a sum of money, it may direct that it be paid by instalments, with or without interest at the above rate.

Court by which decree may be executed.

48. The decree shall be executed by the village court which passed it or by a village court or District Munsif to whom it is sent for execution under the provisions hereinafter contained.

Decree for specific movable how executed.

49. If the decree be for any specific movable, it may be enforced by the seizure of the property, and its delivery to the decree-holder. If the seizure of the property be not practicable, the decree shall be executed by enforcing payment of the sum decreed as an alternative.

Payment of money under a decree or other adjustment to be made or recorded in presence of munsif.

50. All money payable under a decree passed by a village court shall be paid to the decree-holder, or his agent specially authorized in writing, in the presence of the village munsif whose duty it is to execute the decree; but if the decree is otherwise adjusted to the satisfaction of the decree-holder, the nature of such adjustment shall be recorded in writing, and signed by him or his agent in the presence of, and attested by, such village munsif.

Such payment or adjustment shall be endorsed by the village munsif on the decree, and recorded in the register of suits mentioned in section 10.

No payment under a decree, and no adjustment of a decree in whole or in part, shall be recognized unless it has been made or recorded in the manner prescribed by this section, or in the court of the District Munsif.

Judgment-debtor not to be arrested, nor immovable property attached.

51. Subject to the provisions of sections 66 and 67, no judgment-debter shall be arrested and no immovable property attached in execution of a decree of a village court.

Attachment of movable property.

52. On the application of the decree-holder, [1] [the village court, or in the case of a panchayat court, its president or any other member of the court to whom the president may delegate his power in this behalf, shall attach any movable property within the jurisdiction of the court,] belonging to

[1] These words were substituted for the words " the village court shall attach any movable property within his jurisdiction " by section 3 of the Madras Village Courts (Amendment) Act, 1940 (Madras Act XVIII of 1940). This was permanently re-enacted by section 2 of, and the First Schedule to, the Madras Re-enacting (No. II) Act, 1948 (Madras Act VIII of 1948).

the judgment-debtor pointed out by the decree-holder, to the value of the sum payable under the decree, [1] [provided that no property shall be liable to such attachment which is exempt from attachment under section 60 of the Code of Civil Procedure, 1908].

Central Act V of 1908.

53. If the property be in the possession of the judgment-debtor, it shall be attached by actual seizure, and the village munsif shall provide for its safe custody. It may be left in the custody of the judgment-debtor, upon sufficient security being given in writing for its production when required. On default the decree may be executed against the surety to the value of the property not produced.

How made if in possession of judgment-debtor.

[2] [**53-A.** Where the crops or ungathered products of any land are attached under section 53, the village court may cause them to be sold when fit for reaping or gathering, or at its option may cause them to be reaped or gathered in due season and stored in proper places until sold. In the latter case, the expense of reaping or gathering and storing such crops or products shall be defrayed by the judgment-debtor when he redeems the property or from the proceeds of the sale in the event of its being sold.]

Mode of dealing with crops or ungathered products after attachment.

54. If the property be not in the possession of the judgment-debtor, the attachment shall be made by a written order prohibiting the person in possession of the property from giving it over to the judgment-debtor.

How made if not in possession of judgment-debtor.

55. Debts and moneys due to the judgment-debtor shall be attached by a written order prohibiting the judgment-debtor from recovering the debt or receiving the sum of money, and the debtor from making payment thereof until the further order of the village court. Nothing in this section shall be held to authorize a village court to attach or sell a debt charged on immovable property.

Debts how attached.

56. When an attachment has been made by actual seizure, or by a written order, any private alienation of the property attached, whether by sale, gift, pledge or otherwise, and any payment of the debt to the judgment-debtor, during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment void.

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[1] This proviso was substituted for the original proviso by Madras Act II of 1920, s. 23.

[2] This section was inserted by section 6 of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

(Chapter VI.—Of the Decree and its Execution.)

Investigation of claims to attached property.

57. If any claim be preferred to property attached in execution of a decree, the village court shall investigate the claim and if it appears that the judgment-debtor has no saleable interest therein, such property shall be released from attachment.

Property to be sold not less than fifteen days after attachment, and sale to be proclaimed.

58. As soon as possible after attachment, the village court shall fix a day not less than fifteen days from the date of attachment, for the sale of the property attached, and shall cause written proclamation of the intended sale to be fixed [outside the court,] and such sale shall be further proclaimed by beat of drum previous thereto :

Proviso.

Provided that (1) with the consent in writing of the judgment-debtor, or (2) when the property seized is subject to speedy and natural decay, or (3) when the expense of keeping it in custody may exceed its value, the court may, after giving due notice by beat of drum, sell the attached property at any time within fifteen days from the date of attachment. In such case the court shall hold the sale-proceeds subject to the provisions hereinafter made for payment of moneys attached in execution of decrees.

Procedure in sale.

59. On the day fixed for the sale, the property shall be put up for sale by public auction in the presence of the village munsif, and sold to the highest bidder. The price shall be paid without delay, and in default the property shall again be put up to sale.

On payment of the purchase money, the court shall grant a receipt for the same, and the sale shall become absolute.

Any loss on resale shall, at the instance of either the judgment-creditor or judgment-debtor, be recoverable from the defaulter as if a decree had been passed against him for the sale.

Power to adjourn sale.

60. Any sale advertised under this Act may at the discretion of the court be adjourned to a specified day, public notice thereof being given in the manner prescribed by section 58.

Village munsif and other officers not to bid for or buy property sold.

61. No village munsif or other officer having any duty to perform in connection with any sale under this Act shall, either directly or indirectly, bid for or acquire any interest in any property sold at such sale.

Stoppage of sale on tender of debt and costs.

62. Every sale of property under this Act shall be stopped if, before the lot is knocked down, the amount due under the decree and the costs attending the sale are tendered to the village munsif.

Division of precieds of sale.

63. Out of moneys realized in execution, the cost of execution shall first be defrayed and then the amount due to the

[1] These words were substituted for the words " out side his Court. " by section 3(1) of. and the second schedule to the Madras Repealing and Amending Act, 1951 Madras Act XIV of 1951).

decree-holder. Any surplus which may remain shall be paid to the judgment-debtor.

Property actually seized to be delivered to purchaser.

64. When the property sold is one of which actual seizure has been made, the property shall be delivered to the purchaser.

In other cases how property delivered to purchaser.

65. When the property sold is in the possession of any person other than the judgment-debtor, or is a debt due by any person to the judgment-debtor, delivery thereof to the purchaser shall be made by a written notice to such person, prohibiting him from delivering possession of the property or paying the debt to any person except the purchaser, and whatever right the judgment-debtor had in such property or debt at the time of attachment shall vest in the purchaser.

Transmission of decree and execution of transmitted decree.

[1][**66.** (1) Any decree passed by a village court may, on the application of the decree-holder, be transmitted for execution to the District Munsif, who may

(*a*) execute the decree as if it were a decree passed by himself; or

(*b*) transmit it for execution to the court of any other village within his jurisdiction in which the defendant is represented to have movable property; or

(*c*) transmit it to the court of any other District Munsif within whose jurisdiction the defendant is represented to reside or to have property.

(2) The District Munsif to whom a decree has been transmitted under clause (*c*) of sub-section (1) may execute the decree as if it were a decree passed by himself or transmit it for execution to the court of any village within his jurisdiction in which the defendant is represented to have movable property.

(3) The village court to which the decree is transmitted under clause (*b*) of sub-section (1) or sub-section (2) shall proceed as if the decree was passed by itself.]

District Munsif may withdraw execution of any decree.

67. It shall be competent to the District Munsif to withdraw the execution of any decree from any village court, and to execute it himself, as if it were a decree passed by himself.

Central Act V of 1908.

Orders of the District Munsif relating to attachment or sale of movable property not appealable.

[2][**67-A.** Notwithstanding anything contained in the Code of Civil Procedure, 1908, no appeal shall lie from any order made by a District Munsif relating to the attachment or sale of movable property in execution of any decree passed by a village court.]

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[1] This section was substituted for the original section 66 by section 2 of the Madras Village Courts (Amendment) Act, 1929 (Madras Act XV of 1929).

[2] Section 67-A was inserted by section 3, *ibid.*

CHAPTER VII.

MISCELLANEOUS.

If on death of party to suit application is made, legal representative of deceased may be entered on record.

68. If a plaintiff or a defendant die before decree is passed in the suit, the name of his legal representative may be entered in his place on the record, on the application of the opposite party or of such legal representative, but no decree shall be passed against the legal representative of a deceased defendant beyond the value of the assets derived from him and not duly accounted for.

If no application is made, suit to be dismissed.

69. If no such application be made within sixty days from the date of the death of the plaintiff or defendant, the suit shall be dismissed, and no fresh suit shall be allowed to be brought on the same cause of action.

If more than one plaintiff or defendant, suit to proceed at instance of or against survivor.

70. If there be more plaintiffs or defendants than one, and any of them die, and his representative is not joined as aforesaid, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

If decree-holder die, his legal representative may be substituted.

71. If a decree-holder die before the decree has been fully executed, his legal representative may apply to the village court to substitute his name as the decree-holder in the room of the deceased, and if the court be satisfied, after giving notice to the judgment-debtor, that the applicant is the legal representative of the deceased, it shall substitute his name on the record as the decree-holder.

If judgment debtor die, decree may be executed against his legal representative.

72. If a judgment-debtor die before the decree has been fully executed, it may be executed on the application of the decree-holder against the legal representative of the judgment-debtor, to the extent of assets derived from him and not duly accounted for.

Revision by District Munsif of village court's proceedings.

73. The District Munsif may, on a petition being presented within sixty days from the date of any decree or order of a village court by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground—

of corruption, gross partiality or misconduct of the village court ; or

of its having exercised a jurisdiction not vested in it by law, or otherwise acted illegally or with material irregularity ; or

that the decree or order is clearly unjust [1][* * *] and may pass such other decree or order as he thinks fit;

[1] The words " or contrary to law " were omitted by Madras Act II of 1920, s. 24.

provided that no decree or order of a village court shall be set aside without notice to the opposite party. Pending disposal of any such petition, the District Munsif may stay execution of the decree or order.

A petition under this section may be entertained after sixty days by the District Munsif if he is satisfied with the cause shown for the delay.

Except as provided in this section, every decree and order of a village court shall be final.

District Munsif may, and in certain cases shall, report to District Judge.

74. Whenever under section 73 the District Munsif sets aside a decree or order, he may report the case to the District Judge, and shall report every case in which he sets aside a decree or order on the ground of corruption, gross partiality, or misconduct.

Power of High Court to prescribe forms and of District Judge and District Munsif to inspect records.

75. The High Court may, from time to time, prescribe forms for use in village courts and the returns which they shall be bound to submit. The District Judge or the District Munsif may at any time call for and inspect the registers and records of village courts.

[1] [CHAPTER VIII.

CRIMINAL JURISDICTION.

State Government may empower panchayat courts to take cognizance of and try certain offences.

76. (1) The [2] [State Government] may, by order notified in the District Gazette, empower a panchayat court to take cognizance of and try all or any of the following offences when committed within the local limits of its jurisdiction :—

Central Act XLV of 1860.

(*a*) Offences punishable under sections 160, 277, 283, 290, 323, 334, 352, 358, 504 and 510 of the Indian Penal Code.

Central Act XLV of 1860.

(*b*) Offences punishable under section 379 of the Indian Penal Code in respect of property not exceeding ten rupees in value, when the offender has not been previously convicted of theft.

Central Act XLV of 1860.

(*c*) Offences punishable under section 426 of the Indian Penal Code when the loss or damage caused thereby does not exceed ten rupees.

Madras Act III of 1889.

(*d*) Offences punishable under section 3, clauses (9), (11) and (12) of the Towns Nuisances Act, 1889.

Central Act XLV of 1860.

(*e*) Any other specified offence under the Indian Penal Code or any special or local law which is punishable with fine only or with imprisonment for a term not exceeding six months only or with both.

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[1] Chapter VIII was inserted by Madras Act II of 1920, s. 26.

[2] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

(*Chapter VIII.—Criminal Jurisdiction.*)

Provided that in respect of offences mentioned in clauses (*b*) and (*c*) the [1] [State Government] may extend the jurisdiction of a panchayat court to cases where the value of the property stolen or the loss or damage caused does not exceed twenty rupees.

Explanation.—The offences mentioned in this section include abetments of such offences.

Imposition and limit of fine.

[2] [(2) If a panchayat court finds an accused person guilty of any of the above offences, it may impose on him—

(*a*) a fine not exceeding ten rupees in respect of an offence under section 510 of the Indian Penal Code, and

(*b*) a fine not exceeding fifteen rupees in respect of any of the other offences :] Central Act XLV of 1860.

Provided that in case of conviction of an offence under clauses (*b*) and (*c*) of sub-section (1) the fine may extend to twice the value of the property stolen or the amount of the damage caused.

Payment of fine and punishment for default.

(3) The panchayat court may allow a reasonable time for the payment of the fine, or may order that the fine shall be paid by instalments ; but if the fine is not paid as directed, the court shall recover it in the same manner as if it were due under a decree under this Act. If in any case it appears to the court that the fine imposed cannot be recovered as aforesaid, it shall submit the case to the Subdivisional Magistrate, who may award such term of imprisonment as is authorized by law in case of such default ; provided that the term so awarded shall in no case exceed one week.

Procedure in criminal trials.

(4) Subject to such rules as the [1] [State Government] may make in this behalf, the procedure to be adopted by panchayat courts in criminal trials shall be as follows :—

The court need not record the evidence of the witnesses or frame a formal charge but it shall enter in the prescribed form the following particulars :—

(*a*) The serial number ;

(*b*) The date of the commission of the offence ;

(*c*) The date of the report or complaint ;

(*d*) The names, parentage and residences of the complainant, the accused and the witnesses examined ;

(*e*) The offence complained of and the offence (if any) proved, and in cases coming under clauses (*b*) and (*c*) of sub-

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[1] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[2] This was substituted for the first paragraph of sub-section (2) of section 76 by section 7 (i) of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

section (1) the value of the property stolen or the amount of the loss or damage caused;

(*f*) The plea of the accused and his statement, if any;

(*g*) The finding and, in the case of a conviction, a brief statement of the reasons therefor;

(*h*) The amount of fine imposed; and

(*i*) The date on which the proceedings terminated;

No legal practitioner to appear for complainant or accused.

(5) Except in accordance with rules framed by the [1] [State Government] no legal practitioner, whether qualified, or unqualified, shall be allowed to appear either for the complainant or for the accused.

When case may be transferred from panchayat court.

(6) If at any stage of the proceedings it appears to the court that the case is one which ought to be tried by a magistrate or if at the close of the trial the court is of opinion that the accused is guilty and that he ought to receive a punishment different in kind from, or more severe than, that which it is empowered to inflict, it shall submit the case to the Subdivisional Magistrate, who may transfer the case to his own court or to the court of a magistrate subordinate to him.

[2] [(7) (*a*)] The District or Subdivisional Magistrate may, whenever he considers it necessary in the interests of justice, transfer any case pending before a panchayat court to his own court or to the court of any magistrate subordinate to himself or to any other panchayat court within his jurisdiction.

[2] [(*b*) Where however a panchayat court is disestablished and no new panchayat court is constituted in lieu thereof, the District or Subdivisional Magistrate shall transfer all criminal cases and proceedings before such court to his own court or to the court of any Magistrate subordinate to himself or to any panchayat court within his jurisdiction.]

Appeal.

(8) No appeal shall lie against any sentence or order passed by a panchayat court under this section, but the District Magistrate or Subdivisional Magistrate may set aside any conviction on the ground of corruption, gross partiality or misconduct on the part of the court, or on the ground that there has been a gross miscarriage of justice.

Transfer of cases cognizable by panchayat courts.

(9) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a magistrate taking cognizance upon

[1] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[2] Original sub-section (7) of section 76 was lettered as clause (*a*) of sub-section (7) and new clause (*b*) was added by section 7 (ii) of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

(Chapter VIII.—Criminal Jurisdiction. Chapter IX.—Power to make Rules).

a complaint or police report of an offence cognizable by a panchayat court may, unless sufficient reasons exist to the contrary, transfer the case to the panchayat court having jurisdiction.

Applicability of certain section of the Code of Criminal Procedure to court.

77. (1) The provisions of [1] [sections 403, 476, 476-A and 476-B] of the Code of Criminal Procedure, 1898, shall apply to a village court.

(2) Save as provided in sub-section (1) nothing contained in the said Code shall apply to a village court.

[2] CHAPTER IX.

POWER TO MAKE RULES.

78. (1) The [3] [State Government] may make rules to carry out all or any of the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(*a*) regulate the appointments of village munsifs under section 7,

(*b*) regulate the appointments or elections of presidents, [4] [vice-presidents] and other members of the panchayat courts and prescribe their qualifications and disqualifications,

(*c*) regulate the meetings and proceedings of panchayat courts and the attendance of members thereof,

(*d*) prescribe the manner in which panchayat courts may take cognizance of offences and the procedure to be followed by them in the trial of offences,

(*e*) provide for the presentation, withdrawal and dismissal of complaints and the compounding of offences and prescribe the persons who may conduct a prosecution or represent the accused,

(*f*) provide for the summoning and attendance of the accused and for the summoning and examination of witnesses in criminal cases,

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[1] These words, figures and letters were substituted for the word and figures "section 403" by section 8 of the Madras village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

[2] Chapter IX was inserted by Madras Act II of 1920, s. 26.

[3] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[4] This word was inserted by section 9 of the Madras Village Courts (Amendment) Act, 1936 (Madras Act II of 1937).

(*g*) prescribe as to criminal cases the forms of all registers, returns and processes, the manner in which such registers shall be maintained, the dates on which such returns shall be made and the officers to whom they shall be sent,

(*h*) provide for the service of process, the execution of decrees and the recovery of fines,

(*i*) provide for the receipt and custody of all documents and records by or on behalf of panchayat courts and for the grant of copies of decrees and other records, and

(*j*) provide for the levy of fees for the service of process, the execution of decrees and the grant of copies.

(3) All rules made under this section shall be published in the [1][Official Gazette] and upon such publication shall have effect as if enacted in this Act.

[2][* * * *]

[1] These words were substituted for the words "*Fort St. George Gazette*" by the Adaptation Order of 1937.

[2] The Schedule was repealed by section 3 (2) of the Repealing and Amending Act, 1901 (Central Act XI of 1901).